

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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(240) 777-6600

**Case No. A-6511**

**PETITION OF MERIWETHER JONES AND MEGAN CHRISTOPHER**

OPINION OF THE BOARD

(Hearing Held: January 25, 2017)

(Effective Date of Opinion: February 2, 2017)

Case No. A-6511 is an application by Meriwether Jones and Megan Christopher (the "Petitioners") for a variance necessary for the construction of a proposed second-story addition. The proposed construction requires a variance of two (2) feet as it is within five (5) feet of the side lot line. The required side lot line setback is seven (7) feet, in accordance with Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance (2014).

The Board of Appeals held a hearing on the application on Wednesday, January 25, 2017. Mr. Jones and Ms. Christopher appeared pro se at the hearing, along with Paul Treseder, their architect.

Decision of the Board:                      Variance **granted**.

**EVIDENCE PRESENTED**

1. The subject property is Lot P20, Block 16, Pinecrest Subdivision, located at 6700 Cockerille Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone. It is a rectangular corner lot with an area of 5,250 square feet and a width of 42 feet, bordered on the northeast side by Cockerille Avenue and on the southeast side by Second Avenue. See Exhibits 3 and 8.

2. The Petitioners are seeking to construct a second story addition directly over the main (original) portion of this existing one-story home. The existing home is located five (5) feet from the property's northwest side lot line; the proposed addition would not increase the existing footprint of the house. The Petitioners have indicated that the subject property is exceptionally narrow, and that the steep topography in the rear of the

lot precludes expansion in that direction. They further state that other corner lots in their neighborhood "are either considerably wider or have considerably more flat space behind the house in which to expand." See Exhibits 3 and 11(d) (photographs). The zoning vicinity map indicates that the subject property is also shallower than the majority of surrounding properties. See Exhibit 8.

3. The subject property was originally located in Prince George's County. It was recorded in 1926, and the existing house was constructed in 1935, which was prior to the enactment of the first Prince George's County Zoning Ordinance. In 1997, the neighborhood in which the subject property is located was annexed by Montgomery County. The Petitioners note in their Justification Statement that when they purchased this home in 2010, it was conforming, by virtue of Section 59-B-6.2 of the 2004 Zoning Ordinance, but that when the new Zoning Ordinance was enacted in 2014, that provision was not retained, and thus they state that the home became a legal nonconforming structure. See Exhibit 3.

4. The Petitioners indicate in their Justification Statement that despite their contention that their property should be governed by the standards of the first Prince George's County Zoning Ordinance, they have been told by the County's Department of Permitting Services that it is subject to the rules that would be applied to a Montgomery County lot that was recorded in 1926 (i.e the County's 1928 Zoning Ordinance). The 1928 Zoning Ordinance requires a 7 foot side setback.

5. The Petitioners state that their home is one of the few single-story homes left in the neighborhood, that all of their abutting and confronting neighbors have two-story homes, and thus that the proposed addition would substantially conform with the established development pattern in this neighborhood. They further contend that building a second story addition which is stepped in on one side from the plane of the existing first story wall in order to meet the side setback, such that the addition would be only 22 as opposed to 24 feet wide, would not conform with the existing development pattern.

6. The Petitioners state that they did not create the slope of their rear yard. They further state that they did not anticipate, when they purchased this home in 2010, that their home would be rendered nonconforming by the adoption of the 2014 Zoning Ordinance, and that a variance would be required for their proposed construction. They assert that in 2010, their home was considered by DPS to be conforming, and a second story could have been added without a variance,

7. The Petitioners assert that Section III of the County's 1928 Zoning Ordinance evidences an intent that it "shall not be interpreted as to reduce the buildable width of a corner lot, facing an intersecting street and which is separate and distinct from adjacent lots and is included in a plat of record at the time of passage of this [1928 Zoning] ordinance, to less than twenty-four (24) feet." They note that if this variance is granted, they will be allowed a second story which is 24 feet wide; if the variance is denied, their addition will be only 22 feet wide. See Exhibit 3. At the hearing, Mr. Treseder noted that the original house is 24 feet wide, and that the buildable envelope allowed by the Zoning

Ordinance is also 24 feet wide, but that the footprint of the original house is offset from the buildable envelope by 2 feet.

8. At the hearing, Mr. Jones presented a zoning vicinity map on which he had marked with red lines all of the homes in his neighborhood which appear not to meet the required setbacks. See Exhibit 11(b). He testified that the portion of Takoma Park in which the subject property is located was originally located in Prince George's County, and was subdivided before any Zoning Ordinance had been enacted. He testified that in looking at the zoning vicinity map, it appears that when his neighborhood was built, the focus was on the distance of the houses from each other rather than the distance of the houses from the property lines. See Exhibit 11(e).

Mr. Jones testified that the existing house has two bedrooms and is less than 1,000 square feet. He testified that the lot is very narrow (42 feet), and extremely constrained, concluding that the only available direction to build is up. He testified that the only corner lot comparable or smaller than the subject property is the corner lot across Second Avenue, which he said is unlike the subject property in that it is flat and already contains a two-story home. See Exhibit 11(c).

Mr. Jones testified that there is a small single room addition on the rear of the existing house, which was built on blocks/piers and cannot support a second story. He testified that there is a significant slope behind the house, and a garage that is largely buried by that slope. See Exhibit 11(d). He testified that most of the houses in the neighborhood have a second floor, and can expand to the side or the rear, but that the subject property has only one story and no room to expand, which he testifies makes it unique.

Mr. Jones further testified that the subject property is an existing legal nonconforming property, due to the change in the Zoning Ordinance, and that the proposed construction would conform to the development pattern in the neighborhood.

9. Mr. Treseder testified about the architectural design of the proposed addition, stating that he sought to make it compatible by using shorter side walls and a roof overhang, to keep with the modest nature of the existing house, which he described as a bungalow. He testified that the proposed addition is the minimum necessary to accomplish the modest goals of the Petitioners. He stated that the current house does not meet the required 7 foot side setback, and that prior to the adoption of the new Zoning Ordinance, DPS had interpreted the old Zoning Ordinance to allow a 5 foot side setback on these lots. He testified that the proposed second story addition would not decrease the existing side setback.

10. Ms. Christopher testified that several of their neighbors had submitted letters of support for the requested variance. See Exhibit 7(a) – (d).

## FINDINGS OF THE BOARD

Based on the Petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds that at 5,250 square feet, the subject property is substandard for the R-60 zone, and notes that per the testimony of Mr. Jones, is smaller than most other corner lots in the neighborhood. In addition, the Board finds, based on the testimony of Mr. Jones and the Petitioners' written Justification Statement, that the subject property is unusually constrained relative to surrounding properties, and relative to other corner lots, due to the combined effect of its narrow width, shallow depth, and the unusual sloped topography in the rear yard which is peculiar to this property.

*Section 59-7.3.2.E.2.a.ii. – the proposed development uses an existing legal nonconforming property or structure;*

The Board finds that the proposed development uses an existing structure which was built before any Zoning Ordinances were enacted and was considered conforming in 2010, but which does not conform to the standards set forth in the Zoning Ordinance. Thus the Board finds that the application satisfies Sections 59-7.3.2.E.2.a.ii of the Zoning Ordinance.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the subject property was recorded in 1926, and that the existing house was built in 1935. Thus the Board finds that the Petitioners, who purchased this property in 2010, took no actions to create its unusual characteristics.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, based on the testimony of Mr. Treseder and the Justification Statement in the record at Exhibit 3, that the requested variance is the minimum necessary to allow the proposed construction to proceed. The Board further finds that the unusual history of this property, having originally been located in Prince George's County, compounds the challenges this property faces in meeting the Montgomery County Zoning Ordinance. The Board finds that the requested variance is minimal in that it allows the construction of a second story addition over an existing home, and would not

extend any further into the side setback than the existing house already encroaches. The Board further finds that without the grant of this variance, the Petitioners would have to step their second story addition in from the first story on one side, such that the addition would be only 22 feet wide. Thus the Board concludes that compliance with the required side setback would pose a practical difficulty for the Petitioners, and that the grant of this variance is the minimum necessary to overcome the difficulties that full compliance with the Zoning Ordinance would impose.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that the proposed construction will continue the residential use of this property, consistent with the recommendations of the Takoma Park Master Plan, which seeks to "[p]reserve existing residential character, encourage neighborhood reinvestment, and enhance the quality of life throughout Takoma Park."

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties, as evidenced by the letters of support received from the Petitioners' neighbors. See Exhibit 7(a) – (d).

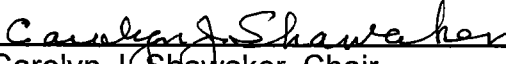
Accordingly, the requested variance to allow construction of a second-story addition is **granted**, subject to the following conditions:

1. Petitioners shall be bound by their testimony and that of Mr. Treseder, and by exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion.

2. Construction shall be according to Exhibits 4 and 5(a) through (c).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Edwin S. Rosado, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Bruce Goldensohn in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
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Carolyn J. Shawaker, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for

Montgomery County, Maryland  
this 2nd day of February, 2017.

  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.